

The amount of Retailers' Occupation Tax due is based upon a percentage of the gross receipts received from the sale of tangible personal property. See 35 ILCS 120/1 et seq. and the Department's regulations at 86 Ill. Adm. Code 130.401(d) and 86 Ill. Adm. Code 130.2145(c)(2)(C). (This is a GIL).

October 24, 2002

Dear Xxxxx:

This letter is in response to your letter dated September 24, 2002. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/Laws/regs/part1200/>.

In your letter, you have stated and made inquiry as follows:

AAA intends to initiate a minimum-spending program of \$1500 per member to be spent in the course of its fiscal year starting October 1 and ending September 30.

We would appreciate your opinion whether the monies that are assessed a member that does not meet the full \$1,500 in spending is subject to a sales tax or a use tax. An example of such an occurrence is as follows:

John Doe as a member of AAA is required to spend \$1,500 in food and beverage from 10/1/02 through 9/30/03. However, John Doe only spends \$1,000 during the fiscal year and as such, is assessed a \$500 penalty, which will be paid in October 2003. John Doe does not receive any tangible property or credits for his \$500 penalty payments. As such is the \$500 penalty subject to a sales tax or a use tax?

The Retailers' Occupation Tax Act, 35 ILCS 120/1 et seq., imposes a tax upon persons engaged in making sales of tangible personal property at retail. The amount of tax due is based upon a percentage of the gross receipts received for the sales. Food prepared for immediate consumption such as food served in a country club dining room would be subject to sales tax at the general merchandise rate. Therefore, if a person sells \$1,500 worth of food for immediate consumption, tax would be based upon the general merchandise rate multiplied by \$1,500. If, however, a person sells \$1,000 worth of food, the tax would be based upon the general merchandise rate multiplied by \$1,000.

As you have indicated, some clubs require that members comply with a minimum-spending program. As in the example above, if the member is required to purchase, and does in fact purchase,

\$1,500 worth of food for immediate consumption, the tax will be based upon the general merchandise rate multiplied by \$1,500. If the member, however, purchases \$1,000 worth of food for immediate consumption, the tax will be based upon the general merchandise rate multiplied by \$1,000. Any penalty that is imposed that is not part of the selling price of tangible personal property would not be subject to sales tax. See the Department's regulations at 86 Ill. Adm. Code 130.401(d) and 86 Ill. Adm. Code 130.2145(c)(2)(C).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at www.revenue.state.il.us. If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of Section 1200.110(b).

Very truly yours,

Martha P. Mote
Associate Counsel

MPM:msk